

ORIGINAL

RECEIVED

JUN 25 2001

MINISTERIAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

MM Docket No. 99-318  
RM-9745

**To: Chief, Video Services Division**

**FURTHER SUPPLEMENT TO PETITION FOR RULE MAKING**  
**AND PUBLIC INTEREST STATEMENT**

Waitt License Company of Florida, Inc. ("Waitt"), licensee of Station WPGX(TV), Panama City, Florida, by its attorney, hereby further supplements its pending petition for rule making in the captioned proceeding with the following elaboration on why grant of Waitt's proposal to commence new digital television service on DTV Channel 9 at Panama City serves the public interest.<sup>1</sup>

In support whereof, the following is shown.

<sup>1</sup> On April 16, 2001, Waitt filed a Supplement to Petition for Rule Making which eliminates the mutual exclusivity between its proposal and that of another entity. No comments were filed in response to the Supplement. This Further Supplement responds to an informal request by an official of the Video Services Division for additional information. Further, because there appears to be some confusion about the current status of adverse "Comments" submitted by Associated Christian Television, Inc. ("ACTS"), licensee of LPTV station WACX-LP and formerly a Class A license applicant, annexed hereto are the following ACTS filings previously served upon the undersigned: a February 26, 2001 "Withdrawal of Comments"; and a March 16, 2001 transmittal letter, "Motion for Leave to File Additional Pleading," and "Response to Reply" by ACTS, withdrawing and requesting dismissal of the Class A license application. Thus, ACTS has formally withdrawn both its protest against the WPGX-DT rule making and its application for Class A license for WACX-LP. ✓


No. of Copies rec'd  
List ABCDE

As is made clear in the Supplement and accompanying Engineering Statement, grant of the Channel 9 WPGX-DT rule making serves the public interest, convenience and necessity for at least the following reasons. While WPGX-DT will receive co-channel interference affecting some 9055 persons (out of a total population of 301,311), the proposal as revised will result in interference-free service within WPGX-DT's 36 dBu contour to 292,256 persons, a gain of more than 80,000 over its Channel 29 replication population. The WPGX-DT proposal does not cause impermissible interference to any station, eliminates a longstanding conflict between two television licensees, hastens the implementation of new DTV service to Panama City and permits expanded DTV service to Mobile, Alabama. The WPGX-DT proposal also conserves scarce Commission resources since the Video Services Division will not have to resolve the conflict. Finally, the cost benefits of WPGX's DTV operation on Channel 9 rather than its allotted Channel 29 will enable Waitt to more quickly and efficiently construct state-of-the-art digital television facilities in a smaller television market and bring higher-quality local programming to its viewers in and around Panama City. As a consequence, the Commission's DTV objectives will be more expeditiously and comprehensively fulfilled. All this accords with the letter and spirit of the *Report and Order* and *Further Notice of Proposed Rule Making* in re *Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television*, FCC-01-24, MM Docket No. 00-39 (2001). Indisputably, this proposal as modified serves the public interest.

WHEREFORE, for these reasons, the WPGX-DT proposal for Channel 9, as supplemented, should be approved.

Respectfully submitted,

**WAITT LICENSE COMPANY OF  
FLORIDA, INC.**

By:  \_\_\_\_\_  
Lawrence Bernstein

Its Attorney

LAW OFFICES OF LAWRENCE  
BERNSTEIN  
1818 N Street, NW  
Suite 700  
Washington, D.C. 20036  
(202) 296-1800

Attachments

June 25, 2001

## **APPENDIX**

**FCC filings by Associated Christian Television System, Inc.  
withdrawing its "Comments" adverse to the instant rule making  
and requesting dismissal of its application for a Class A television  
license for station WACX-LP, Tallahassee, Florida**

# KOERNER & OLENDER, P.C.

Attorneys at Law  
5809 Nicholson Lane, Suite 124  
North Bethesda, Maryland 20852-5706

Tel. (301) 468-3336  
Fax (301) 468-3343

Robert L. Olender \*  
James A. Koerner

Of Counsel  
Robert Bennett Lubic\*

\*not admitted in MD

February 26, 2001

Ms. Magalie Roman Salas  
Secretary  
Federal Communications Commission  
The Portals, TW-A325  
445 Twelfth Street, S.W.  
Washington, DC 20554

COPY


Re: MM Docket No. 99-318  
RM-9745

Dear Ms. Salas:

On behalf of Associated Christian Television System, Inc., licensee of Low Power Television Station WACX-LP, Tallahassee, Florida, there are transmitted herewith an original and four (4) copies of a Withdrawal of the Comments it previously filed in the above-referenced proceeding.

Should additional information be necessary in connection with this matter, please communicate with this office.

Very truly yours,

  
James A. Koerner,  
Counsel for  
Associated Christian Television  
System, Inc.

cc: Mr. Claud Bowers

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Amendment of Section 73.622(b),	)	MM Docket No. 99-318
Table of Allotments,	)	RM-9745
Digital Television Broadcast Stations.	)	
(Panama City, Florida)	)	

To: Chief, Video Services Division

**WITHDRAWAL OF COMMENTS**

Associated Christian Television System, Inc. ("ACTS"), by its attorneys, hereby requests that its Comments in the above -captioned proceeding, filed December 23, 1999, be withdrawn. As rationale for this request, the following is submitted.

At the time the Notice of Proposed Rule Making in this proceeding was released, i.e., November 1, 1999, and the date comments were due, December 23, 1999, the only guiding documents for potential Class A Television Stations were the Community Broadcasters Protection Act of 1999, Pub. L. No. 106-113, 113 Stat. Appendix I at pp. 1501A-594-1501A-598, codified at 47 U.S.C. § 336(f) ("CBPA") and the Commission's earlier-released Notice of Proposed Rule Making in MM Docket No. 99-292, released September 29, 1999 ("Docket 99-292 NPRM").

In the Docket 99-292 NPRM, the commission stated its intention for Class A stations to protect service areas resulting from DTV allotment parameters and any additional DTV service authorized or proposed in a DTV construction permit application before the filing of a Class A TV application (Para. 27). Further, it was acknowledged that the matter of allotment adjustments raised other issues. Nevertheless, the Docket 99-292 NPRM, referencing the DTV Sixth Report and Order, proposed that modifications to the DTV Table should attempt to avoid impact on all LPTV and TV translator stations (Paras. 28-29).

The CBPA excepted from a Class A station's protection changes in the DTV Table made necessary by "technical problems" requiring an "engineering solution." This was in addition to the exception which required Class A stations to give way to service area replication by DTV stations.

Given this background, and the fact that the WPGX (TV) request for change of allotment was neither required for service area replication nor made necessary by technical problems, ACTS filed its Comments opposing the WPGX (TV) request.

Subsequently, in the Report and Order in MM Docket No. 00-10, released April 4, 2000, the Commission refused to require that full service stations requesting an adjustment to the DTV Table demonstrate that the requested change resulting in interference to a Class A station is the only possibility. Nevertheless, the FCC stated that it would review such requests on a case-by-case basis.

More recently, in its Report and Order and Further Notice of Proposed Rule Making in MM Docket No. 00-39, released January 19, 2001, the Commission seems to

have backtracked even from its Docket 00-1- pronouncements. While the issue of Class A station vs. DTV Table changes was not specifically addressed, the relative relationship between DTV rulemakings, DTV service area expansion applications and NTSC facility change applications was discussed. In light of that discussion, it appears unlikely that a Class A station, which should have been protected as to its service area on November 29, 1999, will have priority over a DTV allotment change proposed prior to that date, even though the Comment date was subsequent to the November 29, 1999, effective date of the CBPA.

While the above recitation of the background may seem unnecessary, it is offered as evidence of ACTS' good faith in filing its Comments opposing the WPGX (TV) request at the time it did so. Only subsequent pronouncements have cast doubt upon the likelihood of ACTS' success in this regard.

**ACCORDINGLY**, it is requested that the Comments of ACTS in the captioned proceeding be withdrawn.

Respectfully submitted,

**ASSOCIATED CHRISTIAN  
TELESIVION SYSTEM, INC.**

February 26, 2001

By: 

James A. Koerner

Its Attorney

**KOERNER & OLENDER, P.C.**  
5809 Nicholson Lane  
Suite 124  
North Bethesda, MD 20852-5706  
(301) 468-3336

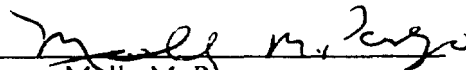


## **CERTIFICATE OF SERVICE**

I, Molly M. Parezo, a secretary in the law offices of Koerner & Olender, P.C., do hereby certify that a copy of the foregoing **"Withdrawal of Comments"** was served this \_\_\_\_<sup>th</sup> day of February, 2001, via first class mail, postage prepaid upon the following:

Lawrence Bernstein, Esq.  
1818 N Street, N.W.  
Suite 700  
Washington, D.C. 20036

John E. Fiorini, III, Esq.  
Lee G. Petro, Esq.  
Gardner, Carton & Douglas  
1301 K Street, N.W.  
Suite 900, East Tower  
Washington, D.C. 20005

  
Molly M. Parezo

# KOERNER & OLENDER, P.C.

Attorneys at Law  
5809 Nicholson Lane, Suite 124  
North Bethesda, Maryland 20852-5706

Tel. (301) 468-3336  
Fax (301) 468-3343

Robert L. Olender \*  
James A. Koerner

Of Counsel  
Robert Bennett Lubic\*

\*not admitted in MD

March 16, 2001

COPY

Ms. Magalie Roman Salas  
Secretary  
Federal Communications Commission  
The Portals, TW-A325  
445 Twelfth Street, S.W.  
Washington, DC 20554

Re: File No. BLTVA-20001130DG

Dear Ms. Salas:

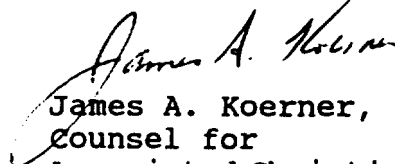
On behalf of Associated Christian Television System, Inc., licensee of Low Power Television Station WACX-LP, and applicant for a Class A license, there are transmitted herewith an original and four (4) copies of a Motion for Leave to File Additional Pleading.

Also transmitted herewith are an original and four (4) copies of a Response to the Reply of Waitt License Company of Florida.

Please note that the applicant is hereby requesting dismissal of the above-referenced application, without prejudice.

Should additional information be necessary in connection with this matter, please communicate with this office.

Very truly yours,

  
James A. Koerner,  
Counsel for

Associated Christian Television  
System, Inc.

cc: ~~Lawrence~~ Bernstein, Esq.  
Mr. Claud Bowers

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

COPY

In re Application of	)	
	)	
ASSOCIATED CHRISTIAN	)	
TELEVISION SYSTEM, INC.	)	File No. BLTVA-20001130DG
Licensee of WACX-LP,	)	
Tallahassee, Florida	)	
	)	
For a Class A Television License	)	

To: Chief, Video Services Division

**MOTION FOR LEAVE TO FILE ADDITIONAL PLEADING**

Associated Christian Television System, Inc. ("ACTS"), by its attorneys, hereby requests leave to file a pleading responsive to the "Reply of Waitt License Company of Florida, Inc." filed February 5, 2001, with respect to the above-captioned application. In support hereof, the following is submitted.

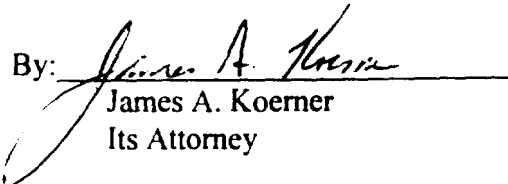
Waitt filed a petition to deny the captioned application on December 27, 2000, alleging that ACTS failed to broadcast on WACX-LP an average of three hours per week of locally-produced programming. In its opposition, ACTS demonstrated that the Waitt allegation was incorrect. In its reply, Waitt made additional allegations, which ACTS would not normally have the ability to address in the pleading cycle.

Apparently, Waitt was fully aware of the fact that it was making new allegations.  
for it asserted that it would not object if ACTS wished to respond to the new allegations.  
Reply at fn. 10.

In order for the Commission to have before it a complete factual record, it is  
respectfully requested that leave be granted for ACTS to file its additional response  
tendered herewith, and that such response be accepted.

Respectfully submitted,

**ASSOCIATED CHRISTIAN  
TELEVISION SYSTEM, INC.**

By:   
James A. Koerner  
Its Attorney

March 16, 2001

**KOERNER & OLENDER, P.C.**  
5809 Nicholson Lane  
Suite 124  
North Bethesda, MD 20852-5706  
(301) 468-3336

## **CERTIFICATE OF SERVICE**

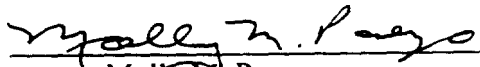
I, Molly M. Parezo, a secretary in the law offices of Koerner & Olender, P.C., do hereby certify that a copy of the foregoing **"Motion For Leave to File Additional Pleading"** was served this 16<sup>th</sup> day of March, 2001, via first class mail, postage prepaid upon the following:

\* Clay Pendarvis, Esq.  
Chief, Television Branch  
Video Services Division  
Mass Media Bureau  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW 2-A662  
Washington, D.C. 20554

\* Mr. Hossein Hashemzadeh  
Video Services Division  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW 2-C866  
Washington, D.C. 20554

Lawrence Bernstein, Esq.  
1818 N Street, N.W.  
Suite 700  
Washington, D.C. 20036

\* Hand Delivered

  
Molly M. Parezo

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

COPY

In re Application of	)	
	)	
ASSOCIATED CHRISTIAN	)	
TELEVISION SYSTEM, INC.	)	File No. BLTVA-20001130DG
Licensee of WACX-LP,	)	
Tallahassee, Florida	)	
	)	
For a Class A Television License	)	

To: Chief, Video Services Division

**RESPONSE TO REPLY**

Associated Christian Television System, Inc. ("ACTS"), by its attorneys, hereby submits its response to the "Reply of Waitt License Company of Florida, Inc." filed February 5, 2001, with respect to the above-captioned application.

In its Reply, Waitt makes a number of allegations which, it argues, require denial of the captioned application. In fact, the Waitt allegations are either erroneous, or do not require denial.

ACTS has previously demonstrated that at all pertinent times, and even continuing, Station WACX-LP broadcasts more than 18 hours per day, and broadcasts more than three hours per week of locally-produced programming. The ACTS Opposition to Waitt's petition to deny supplied program schedules for the period prior to

the filing of its Certification of Eligibility and for the current month. ACTS further identified the specific programs which were produced in Tallahassee. They comprise far more than three hours per week. Even Waitt's own employee, Sue Stewart, acknowledged the existence of a studio in Tallahassee. It would be absurd for WACX-LP to equip a studio if it were not to be used.

Waitt further alleges that ACTS failed to publish, in a Tallahassee newspaper, notice of its Class A application filing. In this, it is correct. However, such publication is not required. While Waitt cites Section 73.3580(c) of the Rules, which normally requires publication, it fails to acknowledge the existence of Section 73.3580(d)(5), adopted specifically with respect to Class A applications. That section requires broadcast announcements only, and explicitly states "Newspaper publication is not required." The certification as to local public notice was not wrong.

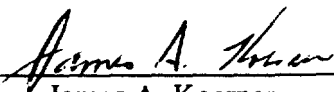
As explained in the attached Declaration of Claud Bowers, at all times prior to the Certification of Eligibility, and until July, 2000, ACTS had an average of four employees at the Tallahassee studio. At that time, because of reorganization, the number of ACTS employees was reduced and the studio was temporarily understaffed. This was intended to be a temporary measure, and that full staffing would resume. In fact, it was hoped that such staffing would be resumed by now. However, at this time, ACTS is unable to specify precisely when the staff will be increased. In the meantime, ACTS has a contract with Tod Cole to continue the locally produced programming.

The Claud Bowers Declaration also explains why Sue Stewart was unable to view the public inspection file at the time of her visit.

Finally, because ACTS is not able to state when it may be able to have two or more employees at the Tallahassee studio, it is withdrawing its Class A application. Notwithstanding this withdrawal, ACTS believes the Commission should have a full record of the facts in this case.

Respectfully submitted.

**ASSOCIATED CHRISTIAN  
TELEVISION SYSTEM, INC.**

By:   
James A. Koerner  
Its Attorney

March 16, 2001

**KOERNER & OLENDER, P.C.**  
5809 Nicholson Lane  
Suite 124  
North Bethesda, MD 20852-5706  
(301) 468-3336



**DECLARATION**

Claud Bowers does hereby declare under penalty of perjury as follows:

He is President of Associated Christian Television System, Inc., licensee of Low Power Television Station WACX-LP, Tallahassee, Florida, and applicant for Class A status for that station.

Station WACX-LP maintains a studio/office in Tallahassee, Florida.

In the period prior to, and during the three month period prior to November 28, 1999, there were an average of approximately four (4) full time and/or part time employees at the Tallahassee studio/office. Their duties included the production and telecasting of programming broadcast on WACX-LP. The full time manager during this time was Clyde Bowers.

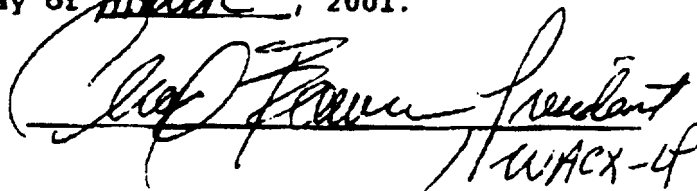
From approximately July, 2000 to March, 2001, because of reorganization efforts, employees from the Tallahassee studio/office either resigned or were reassigned to other duties. During this period, my sister, Lynette Welch, was "babysitting" the station, as temporary manager, largely as a favor to me. We continued to produce programming in Tallahassee for broadcast on WACX-LP.

It was our intention that beginning in March, 2001, the staffing at the Tallahassee studio would return to levels approximating or only slightly less than those prior to July, 2000. However, financial considerations dictate that increases in personnel be postponed for the foreseeable future. We will continue to produce programming in Tallahassee for broadcast on WACX-LP, and we have a contract with Mr. Tod Cole for the production of such programming and operation of Master Control.

Because of this decision not to increase personnel in Tallahassee, we are withdrawing the application for Class A status for WACX-LP.

At the time Sue Stewart visited the WACX-LP studio/office, in January, 2001, my sister apparently was not aware of the location of the public inspection file. Had Ms. Stewart called me, or asked my sister to call me, I could have provided that information.

Dated this 14<sup>th</sup> day of March, 2001.

  
Clyde Bowers, President  
WACX-LP

## CERTIFICATE OF SERVICE

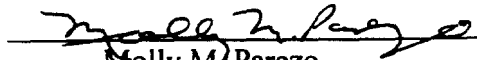
I, Molly M. Parezo, a secretary in the law offices of Koerner & Olender, P.C., do hereby certify that a copy of the foregoing **"Response to Reply"** was served this 16<sup>th</sup> day of March, 2001, via first class mail, postage prepaid upon the following:

\* Clay Pendarvis, Esq.  
Chief, Television Branch  
Video Services Division  
Mass Media Bureau  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW 2-A662  
Washington, D.C. 20554

\* Mr. Hossein Hashemzadeh  
Video Services Division  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW 2-C866  
Washington, D.C. 20554

Lawrence Bernstein, Esq.  
1818 N Street, N.W.  
Suite 700  
Washington, D.C. 20036

\* Hand Delivered

  
Molly M. Parezo

**CERTIFICATE OF SERVICE**

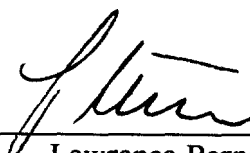
I hereby certify that I have, this 25<sup>th</sup> day of June, 2001, served copies of the foregoing "Further Supplement to Petition for Rule Making and Public Interest Statement" upon the following persons via first class United States mail, postage prepaid:

Clay Pendarvis, Esq.  
Chief, Television Branch  
Video Services Division  
Mass Media Bureau  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW 2-A662  
Washington, D.C. 20554

Mr. H. John Morgan  
Assistant Chief  
Video Services Division  
Mass Media Bureau  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW 2-C864  
Washington, D.C. 20554

Ms. Nazifa Naim  
Video Services Division  
Mass Media Bureau  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW 2-C834  
Washington, D.C. 20554

John E. Fiorini III, Esq.  
Wiley, Rein & Fielding  
1776 K Street, NW  
Washington, D.C. 20006

  
\_\_\_\_\_  
Lawrence Bernstein